Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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No. 86-1536

In The

Supreme Court of the United States

October Term, 1986

WADE POWELL AND FREDA POWELL, HIS WIFE, AND ERWIN WHITE AND SUSAN WHITE, HIS WIFE,

Petitioners,

v.

STATE OF FLORIDA, MUNROE REGIONAL MEDICAL CENTER, WILLIAM H. SHUTZE, M.D., KEITH GAUGER, THOMAS M. TECHMAN, NORTH FLORIDA LIONS EYE BANK, INC., THE MEDICAL EYE BANK., INC., FLORIDA LIONS EYE BANK, INC., FLORIDA SOCIETY OF OPHTHALMOLOGY, INC., METROPOLITAN DADE COUNTY AND THE FLORIDA MEDICAL ASSOCIATION,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

RESPONDENTS', NORTH FLORIDA LIONS EYE BANK, INC., THE MEDICAL EYE BANK, INC., and FLORIDA LIONS EYE BANK, INC., RESPONSE OPPOSING MOTION TO PARTICIPATE AS AMICUS CURIAE

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Respondents, NORTH FLORIDA LIONS EYE BANK, INC., THE MEDICAL EYE BANK, INC., and FLORIDA LIONS EYE BANK, INC., object to the Motion of the Rabbinical Association of Greater Miami, Temple Beth Or, and Rabbi Shapiro seeking leave to participate as *amicus curiae* in the above case, on the following grounds:

1) The Motion for *amicus* participation is an attempt to interject a particular religious argument based on the Free Exercise Clause into a case which does not concern religion and in which no religious objection has ever been raised anywhere in the record.

2) The Florida Supreme Court in the opinion from which certiorari is sought refused to permit raising of any religious arguments since there was no record support for a religious objection:

> The record contains no evidence that the appellees' objections to the removal of corneal tissues for human transplants are based on any "fundamental tenets of their religious beliefs." *Wisconsin v. Yoder,* 406 U.S. at 218, 92 S.Ct. at 1534. "[T]he very concept of ordered liberty precludes allowing every person to make his own standards on matters of conduct in which society as a whole has important interests." *Id.* at 215-16, 92 S.Ct. at 1533.

State of Florida v. Powell, 497 So.2d 1188, 1193 (Fla. 1986).

3) No claim based on a religious objection was ever argued to the trial court, nor considered or relied on by any trial or appellate court in this case.

4) The Rabbinical Association attempts simply to introduce into this case one particular religious creed in

the abstract, with no record showing that any Petitioner sincerely adheres to that religious belief. Where there is no record support for a party's religious objection based on his sincere religious belief, claims based on the Free Exercise Clause may not be raised. *See Harris v. McRae,* 448 U.S. 297 (1980).

5) Contrary to representations in the motion, all principal Respondents do, indeed, object to *amicus* participation by this group. These Respondents have been informed by the Attorney General's office that the State of Florida gave its consent only upon its understanding that *all* other Respondents had consented. Clearly not all Respondents have consented, as practically all have voiced objection. Because of this, even the State of Florida has not properly consented.

Because there is no record support for any issue of religion having been raised in this case, *amicus* participation by representatives of a particular religious sect is clearly inappropriate. Moreover, according to Supreme Court Rule 36, an *amicus curiae* supporting a petition for writ of certiorari is not favored when consent has been refused:

> A motion for leave to file such a brief when consent has been refused is not favored.

Because most of Respondents object to *amicus* participation by this religious group, leave should be denied and the group's Brief should be returned.

Respectfully submitted, this 27 day of April, 1987.

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